

FILED
U.S. DISTRICT COURT

2007 JAN 18 P 2: 21

DISTRICT OF UTAH

BY: 
DISTRICT CLERK

IN THE UNITED STATES DISTRICT COURT JUDICIAL DISTRICT

DISTRICT OF UTAH, CENTRAL DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JAMES P. GIBAS,

Defendant.

ORDER CONFIRMING SALE

Civil No. 2:06-cv-100-BSJ

Judge Bruce S. Jenkins

This matter comes before the Court for a confirmation of the sale of property held in this Receivership Estate, pursuant to 28 U.S.C. § 2001(b), as sought by the Receiver's Motion dated October 30, 2006. The Court previously entered an Order Approving Sale on December 27, 2006, also pursuant to § 2001(b). Based on the foregoing, and for good cause appearing, the Court now hereby ORDERS, ADJUDGES, and DECREES as follows:

1. The real property held in this Receivership Estate consists of a house at 2393 East Bear Hills Drive, Draper, Utah, also known as Lot 218, The Cove at Bear Canyon - Phase II, Tax ID No. 28-27-252-010 (the "**House**"). The House is presently recorded in the name of Noel K. Gibas.

2. The Court's Order Approving Sale previously approved the terms of sale of the House to Kevin K. McCallum and Cathy M. McCallum (the "**Buyers**") in accordance with 28 U.S.C. § 2001(b). The Order authorized the Receiver to execute a Receiver's Deed and to place

that Deed in escrow with Equity Title Company. The Order also required the Buyers to place in escrow either the full purchase price or the earnest money and other evidence of ability to complete the purchase. Those items would remain in escrow anticipating this Order Confirming Sale.

3. The Court finds that, based on the Order Appointing Appraisers entered October 2, 2006, the Receiver has engaged three appraisals of the House. The appraisers are Stephen M. Ward of U.S. Appraisers, Robert B. Vincent of Vincent Appraisal Service, and Michael Forsyth of Mountain West Appraisal. Each of the approved appraisers has completed an appraisal on the House. Pursuant to this Court's Order Appointing Appraisers and 28 U.S.C. § 2001(b), the "appraised value" is determined by averaging the values rendered by the three appraisers for the House. The three appraisals of the House were \$800,000, \$800,000, and \$730,000, the average of which is \$776,666.67. The purchase price for the House, as previously approved in the Court's Order Approving Sale, is greater than $\frac{2}{3}$ of the appraised value.

4. After the Order Approving Sale, the terms of sale were published as this Court directed in the *Intermountain Commercial Record*, which is a newspaper of general circulation in Salt Lake County, Utah, and more than ten days has elapsed since that publication.

5. No bona fide offer to purchase either the House or the Land has been made under conditions prescribed by this Court guaranteeing at least a 10% increase over the terms approved in the Order Approving Sale.

6. By this Order, the Court hereby confirms the sale to Kevin K. McCallum and Cathy M. McCallum and finds that all of the conditions prescribed by 28 U.S.C. § 2001 and the Order Approving Sale have been satisfied. The escrow may now close, with instructions to the escrow officer to deliver the Receiver's Deed to the Buyers and to deliver the purchase price to the Receiver, less commissions and closing costs as described below.

7. By this Order, the Court approves payment of a 6% total commission to be divided between the Receiver's and the Buyers' real estate brokers as they shall agree, and also approves the payment of typical closing costs including property taxes, title insurance premiums, document fees, recording fees, etc. Such commissions and closing costs are determined to be administrative expenses of this Receivership Estate.

8. This Order together with the Receiver's Deed shall constitute evidence of title to the House being vested in the Buyers as Grantees, in fee simple absolute, and by this Order the Court divests all rights of ownership held by Noel K. Gibas.

9. The Court hereby permanently enjoins all parties and claimants to this proceeding and any other persons or entities from interfering with the Buyers' title to and quiet possession of the House.

10. A certified copy of this Order and the Receiver's Deed shall be recorded in the Office of the Salt Lake County Recorder as evidence of the transfer of title referenced herein.

11. Thereupon, title shall transfer to Kevin K. McCallum and Cathy M. McCallum free and clear of all liens and encumbrances, including the claims of Countrywide Home Loans and any affiliated entities, Eckman & Mitchell, and any other persons asserting ownership or lienhold

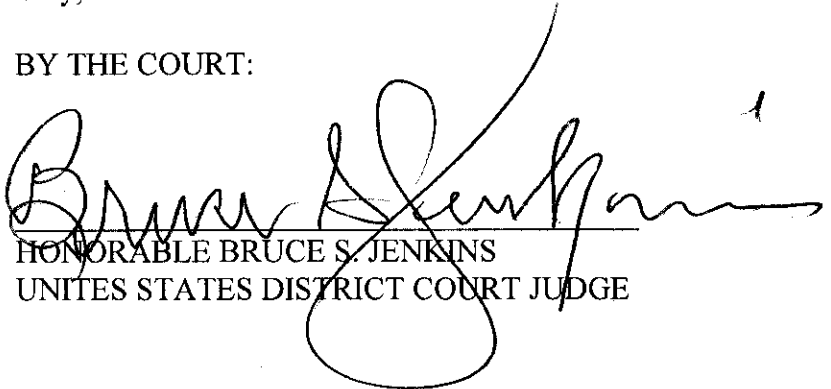
interests. All such ownership or lienhold claims shall be transferred to the proceeds of sale with the same priority, character, rank, and dignity as they bore to the House prior to the sale, if any.

12. This Order Confirming Sale does not affect the remaining issues before the Court including those relating to the determination of claims and the ultimate distribution of the Receivership Estate.

IT IS SO ORDERED.

DATED this 18 day of January, 2007.

BY THE COURT:

A handwritten signature in black ink, appearing to read "Bruce S. Jenkins", is written over a horizontal line. The signature is fluid and cursive, with a large loop at the end. A small number "1" is written to the right of the signature.

HONORABLE BRUCE S. JENKINS
UNITES STATES DISTRICT COURT JUDGE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on January __, 2007, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which sent notification of such filing to the following:

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AND

I hereby certify that I have mailed by United States Postal Service, the foregoing document to the following non-CM/ECF participants:

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MATTHEW C. BARNECK

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